

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROBERT CHASE NESTEGARD,

Defendant.

CR 21-37-M-DLC

ORDER

On September 3, 2021, Defendant Robert Nestegard appeared before the Court for hearing on the issue of his release or detention under 18 U.S.C. § 3142. The criminal indictment charges Defendant with the offense of being a prohibited person in possession of a firearm and ammunition in violation of 18 U.S.C. § 922(g)(1).

The Court has authority to detain a criminal defendant pending a trial if the Court “finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community[.]” 18 U.S.C. § 3142(e). To meet its burden of persuading the Court that no conditions will reasonably ensure the safety of any other person or the community, the government must present clear and convincing evidence to that effect. 18 U.S.C. § 3142(f)(2). A finding that no condition or combination of

conditions will reasonably assure the defendant's appearance must be supported by a preponderance of the evidence. *United States v. Aitken*, 898 F.2d 104, 107 (9th Cir. 1990).

The Court has considered the evidence and arguments presented by counsel as they bear upon the factors listed in § 3142(g). First, the Court finds there is no conditions to impose that would ensure the safety of the community. Witness testimony at the hearing established that at Defendant's arrest he had ammunition and was wearing full body armor. There was also testimony that Defendant had been involved in a shooting resulting in bodily injury.

Secondly, the Court finds that no conditions or combination of conditions could mitigate the flight risk of Defendant if he was released. Witness testimony at the hearing established that defendant appeared to be fleeing with a backpack and a drug kit as he was being arrested.

Based on the record in this case, the Court finds there is clear and convincing evidence establishing that no condition or combination of conditions will reasonably assure the safety of the community and mitigate the risk of flight if Defendant were released. The Court concludes Defendant is subject to detention under 18 U.S.C. § 3142(e).

Therefore, **IT IS HEREBY ORDERED** the Defendant is committed to the custody of the Attorney General or his designated representative for confinement

in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The Defendant shall be afforded a reasonable opportunity for private consultation with defense counsel.

On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility shall deliver the Defendant to the United States Marshal for the purpose of an appearance in connection with a court proceeding.

DATED this 3rd day September, 2021.



Kathleen L. DeSoto
United States Magistrate Judge